

# HB3326



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3326

by Rep. Ann Williams

#### SYNOPSIS AS INTRODUCED:

215 ILCS 155/3  
215 ILCS 155/16

from Ch. 73, par. 1403  
from Ch. 73, par. 1416

Amends the Title Insurance Act. Makes changes in the definition of "insured closing letter" or "closing protection letter". Provides that a closing protection letter shall not be issued by any person or entity other than a title insurance company. Effective immediately.

LRB099 09041 MLM 29228 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Title Insurance Act is amended by changing  
5 Sections 3 and 16 as follows:

6 (215 ILCS 155/3) (from Ch. 73, par. 1403)

7 Sec. 3. As used in this Act, the words and phrases  
8 following shall have the following meanings unless the context  
9 requires otherwise:

10 (1) "Title insurance business" or "business of title  
11 insurance" means:

12 (A) Issuing as insurer or offering to issue as insurer  
13 title insurance; and

14 (B) Transacting or proposing to transact one or more of  
15 the following activities when conducted or performed in  
16 contemplation of or in conjunction with the issuance of  
17 title insurance;

18 (i) soliciting or negotiating the issuance of  
19 title insurance;

20 (ii) guaranteeing, warranting, or otherwise  
21 insuring the correctness of title searches for all  
22 instruments affecting titles to real property, any  
23 interest in real property, cooperative units and

1           proprietary leases, and for all liens or charges  
2           affecting the same;

3           (iii) handling of escrows, settlements, or  
4           closings;

5           (iv) executing title insurance policies;

6           (v) effecting contracts of reinsurance;

7           (vi) abstracting, searching, or examining titles;

8           or

9           (vii) issuing insured closing letters or closing  
10          protection letters;

11          (C) Guaranteeing, warranting, or insuring searches or  
12          examinations of title to real property or any interest in  
13          real property, with the exception of preparing an  
14          attorney's opinion of title; or

15          (D) Guaranteeing or warranting the status of title as  
16          to ownership of or liens on real property and personal  
17          property by any person other than the principals to the  
18          transaction; or

19          (E) Doing or proposing to do any business substantially  
20          equivalent to any of the activities listed in this  
21          subsection, provided that the preparation of an attorney's  
22          opinion of title pursuant to paragraph (1)(C) is not  
23          intended to be within the definition of "title insurance  
24          business" or "business of title insurance".

25          (1.5) "Title insurance" means insuring, guaranteeing,  
26          warranting, or indemnifying owners of real or personal property

1 or the holders of liens or encumbrances thereon or others  
2 interested therein against loss or damage suffered by reason of  
3 liens, encumbrances upon, defects in, or the unmarketability of  
4 the title to the property; the invalidity or unenforceability  
5 of any liens or encumbrances thereon; or doing any business in  
6 substance equivalent to any of the foregoing. "Warranting" for  
7 purpose of this provision shall not include any warranty  
8 contained in instruments of encumbrance or conveyance. Title  
9 insurance is a single line form of insurance, also known as  
10 monoline. An attorney's opinion of title pursuant to paragraph  
11 (1)(C) is not intended to be within the definition of "title  
12 insurance".

13 (2) "Title insurance company" means any domestic company  
14 organized under the laws of this State for the purpose of  
15 conducting the business of title insurance and any title  
16 insurance company organized under the laws of another State,  
17 the District of Columbia or foreign government and authorized  
18 to transact the business of title insurance in this State.

19 (3) "Title insurance agent" means a person, firm,  
20 partnership, association, corporation or other legal entity  
21 registered by a title insurance company and authorized by such  
22 company to determine insurability of title in accordance with  
23 generally acceptable underwriting rules and standards in  
24 reliance on either the public records or a search package  
25 prepared from a title plant, or both, and authorized by such  
26 title insurance company in addition to do any of the following:

1 act as an escrow agent pursuant to subsections (f), (g), and  
2 (h) of Section 16 of this Act, solicit title insurance, collect  
3 premiums, or issue title insurance commitments, policies, and  
4 endorsements of the title insurance company; provided,  
5 however, the term "title insurance agent" shall not include  
6 officers and salaried employees of any title insurance company.

7 (4) "Producer of title business" is any person, firm,  
8 partnership, association, corporation or other legal entity  
9 engaged in this State in the trade, business, occupation or  
10 profession of (i) buying or selling interests in real property,  
11 (ii) making loans secured by interests in real property, or  
12 (iii) acting as broker, agent, attorney, or representative of  
13 natural persons or other legal entities that buy or sell  
14 interests in real property or that lend money with such  
15 interests as security.

16 (5) "Associate" is any firm, association, partnership,  
17 corporation or other legal entity organized for profit in which  
18 a producer of title business is a director, officer, or partner  
19 thereof, or owner of a financial interest, as defined herein,  
20 in such entity; any legal entity that controls, is controlled  
21 by, or is under common control with a producer of title  
22 business; and any natural person or legal entity with whom a  
23 producer of title business has any agreement, arrangement, or  
24 understanding or pursues any course of conduct the purpose of  
25 which is to evade the provisions of this Act.

26 (6) "Financial interest" is any ownership interest, legal

1 or beneficial, except ownership of publicly traded stock.

2 (7) "Refer" means to place or cause to be placed, or to  
3 exercise any power or influence over the placing of title  
4 business, whether or not the consent or approval of any other  
5 person is sought or obtained with respect to the referral.

6 (8) "Escrow Agent" means any title insurance company or any  
7 title insurance agent, including independent contractors of  
8 either, acting on behalf of a title insurance company, which  
9 receives deposits, in trust, of funds or documents, or both,  
10 for the purpose of effecting the sale, transfer, encumbrance or  
11 lease of real property to be held by such escrow agent until  
12 title to the real property that is the subject of the escrow is  
13 in a prescribed condition. An escrow agent conducting closings  
14 shall be subject to the provisions of paragraphs (1) through  
15 (4) of subsection (e) of Section 16 of this Act.

16 (9) "Independent Escrowee" means any firm, person,  
17 partnership, association, corporation or other legal entity,  
18 other than a title insurance company or a title insurance  
19 agent, which receives deposits, in trust, of funds or  
20 documents, or both, for the purpose of effecting the sale,  
21 transfer, encumbrance or lease of real property to be held by  
22 such escrowee until title to the real property that is the  
23 subject of the escrow is in a prescribed condition. Federal and  
24 State chartered banks, savings and loan associations, credit  
25 unions, mortgage bankers, banks or trust companies authorized  
26 to do business under the Illinois Corporate Fiduciary Act,

1 licensees under the Consumer Installment Loan Act, real estate  
2 brokers licensed pursuant to the Real Estate License Act of  
3 2000, as such Acts are now or hereafter amended, and licensed  
4 attorneys when engaged in the attorney-client relationship are  
5 exempt from the escrow provisions of this Act. "Independent  
6 Escrowee" does not include employees or independent  
7 contractors of a title insurance company or title insurance  
8 agent authorized by a title insurance company to perform  
9 closing, escrow, or settlement services.

10 (10) "Single risk" means the insured amount of any title  
11 insurance policy, except that where 2 or more title insurance  
12 policies are issued simultaneously covering different estates  
13 in the same real property, "single risk" means the sum of the  
14 insured amounts of all such title insurance policies. Any title  
15 insurance policy insuring a mortgage interest, a claim payment  
16 under which reduces the insured amount of a fee or leasehold  
17 title insurance policy, shall be excluded in computing the  
18 amount of a single risk to the extent that the insured amount  
19 of the mortgage title insurance policy does not exceed the  
20 insured amount of the fee or leasehold title insurance policy.

21 (11) "Department" means the Department of Financial and  
22 Professional Regulation.

23 (12) "Secretary" means the Secretary of Financial and  
24 Professional Regulation.

25 (13) "Insured closing letter" or "closing protection  
26 letter" means an indemnification or undertaking to a party to a

1 real property transaction, from a ~~principal such as a~~ title  
2 insurance company, setting forth in writing the extent of the  
3 title insurance company's ~~principal's~~ responsibility for  
4 intentional misconduct or errors in closing the real property  
5 transaction on the part of a settlement agent, such as a title  
6 insurance agent or other settlement service provider, and  
7 includes protection afforded pursuant to subsections (f), (g),  
8 and (h) of Section 16 and Section 16.1 of this Act even if such  
9 protection is afforded by contract.

10 (14) "Residential real property" means a building or  
11 buildings consisting of one to 4 residential units or a  
12 residential condominium unit where at least one of the  
13 residential units or condominium units is occupied or intended  
14 to be occupied as a residence by the purchaser or borrower, or  
15 in the event that the purchaser or borrower is the trustee of a  
16 trust, by a beneficiary of that trust.

17 (15) "Financial institution" means any bank subject to the  
18 Illinois Banking Act, any savings and loan association subject  
19 to the Illinois Savings and Loan Act of 1985, any savings bank  
20 subject to the Savings Bank Act, any credit union subject to  
21 the Illinois Credit Union Act, and any federally chartered  
22 commercial bank, savings and loan association, savings bank, or  
23 credit union organized and operated in this State pursuant to  
24 the laws of the United States.

25 (Source: P.A. 98-387, eff. 8-16-13.)

1 (215 ILCS 155/16) (from Ch. 73, par. 1416)

2 Sec. 16. Title insurance agents.

3 (a) No person, firm, partnership, association, corporation  
4 or other legal entity shall act as or hold itself out to be a  
5 title insurance agent unless duly registered by a title  
6 insurance company with the Secretary.

7 (b) Each application for registration shall be made on a  
8 form specified by the Secretary and prepared in duplicate by  
9 each title insurance company which the agent represents. The  
10 title insurance company shall retain the copy of the  
11 application and forward the original to the Secretary with the  
12 appropriate fee.

13 (c) Every applicant for registration, except a firm,  
14 partnership, association, limited liability company, or  
15 corporation, must be 18 years or more of age. Included in every  
16 application for registration of a title insurance agent,  
17 including a firm, partnership, association, limited liability  
18 company, or corporation, shall be an affidavit of the applicant  
19 title insurance agent, signed and notarized in front of a  
20 notary public, affirming that the applicant and every owner,  
21 officer, director, principal, member, or manager of the  
22 applicant has never been convicted or pled guilty to any felony  
23 or misdemeanor involving a crime of theft or dishonesty or  
24 otherwise accurately disclosing any such felony or misdemeanor  
25 involving a crime of theft or dishonesty. No person who has had  
26 a conviction or pled guilty to any felony or misdemeanor

1 involving theft or dishonesty may be registered by a title  
2 insurance company without a written notification to the  
3 Secretary disclosing the conviction or plea, and no such person  
4 may serve as an owner, officer, director, principal, or manager  
5 of any registered title insurance agent without the written  
6 permission of the Secretary.

7 (d) Registration shall be made annually by a filing with  
8 the Secretary; supplemental registrations for new title  
9 insurance agents to be added between annual filings shall be  
10 made from time to time in the manner provided by the Secretary;  
11 registrations shall remain in effect unless revoked or  
12 suspended by the Secretary or voluntarily withdrawn by the  
13 registrant or the title insurance company.

14 (e) Funds deposited in connection with any escrows,  
15 settlements, or closings shall be deposited in a separate  
16 fiduciary trust account or accounts in a bank or other  
17 financial institution insured by an agency of the federal  
18 government unless the instructions provide otherwise. The  
19 funds shall be the property of the person or persons entitled  
20 thereto under the provisions of the escrow, settlement, or  
21 closing and shall be segregated by escrow, settlement, or  
22 closing in the records of the escrow agent. The funds shall not  
23 be subject to any debts of the escrowee and shall be used only  
24 in accordance with the terms of the individual escrow,  
25 settlement, or closing under which the funds were accepted.

26 Interest received on funds deposited with the escrow agent

1 in connection with any escrow, settlement, or closing shall be  
2 paid to the depositing party unless the instructions provide  
3 otherwise.

4 The escrow agent shall maintain separate records of all  
5 receipts and disbursements of escrow, settlement, or closing  
6 funds.

7 The escrow agent shall comply with any rules adopted by the  
8 Secretary pertaining to escrow, settlement, or closing  
9 transactions.

10 (f) A title insurance agent shall not act as an escrow  
11 agent in a nonresidential real property transaction where the  
12 amount of settlement funds on deposit with the escrow agent is  
13 less than \$2,000,000 or in a residential real property  
14 transaction unless the title insurance agent, title insurance  
15 company, or another authorized title insurance agent has  
16 committed for the issuance of title insurance in that  
17 transaction and the title insurance agent is authorized to act  
18 as an escrow agent on behalf of the title insurance company for  
19 which the commitment for title insurance has been issued. The  
20 authorization under the preceding sentence shall be given  
21 either (1) by an agency contract with the title insurance  
22 company which contract, in compliance with the requirements set  
23 forth in subsection (g) of this Section, authorizes the title  
24 insurance agent to act as an escrow agent on behalf of the  
25 title insurance company or (2) by a closing protection letter  
26 in compliance with the requirements set forth in Section 16.1

1 of this Act, issued by the title insurance company to the  
2 seller, buyer, borrower, and lender. A closing protection  
3 letter shall not be issued by a title insurance agent, an  
4 independent escrowee, or any other person or entity other than  
5 a title insurance company. The provisions of this subsection  
6 (f) shall not apply to the authority of a title insurance agent  
7 to act as an escrow agent under subsection (g) of Section 17 of  
8 this Act.

9 (g) If an agency contract between the title insurance  
10 company and the title insurance agent is the source of the  
11 authority under subsection (f) of this Section for a title  
12 insurance agent to act as escrow agent for a real property  
13 transaction, then the agency contract shall provide for no less  
14 protection from the title insurance company to all parties to  
15 the real property transaction than the title insurance company  
16 would have provided to those parties had the title insurance  
17 company issued a closing protection letter in conformity with  
18 Section 16.1 of this Act.

19 (h) A title insurance company shall be liable for the acts  
20 or omissions of its title insurance agent as an escrow agent if  
21 the title insurance company has authorized the title insurance  
22 agent under subsections (f) and (g) of this Section 16 and only  
23 to the extent of the liability undertaken by the title  
24 insurance company in the agency agreement or closing protection  
25 letter. The liability, if any, of the title insurance agent to  
26 the title insurance company for acts and omissions of the title

1 insurance agent as an escrow agent shall not be limited or  
2 otherwise modified because the title insurance company has  
3 provided closing protection to a party or parties to a real  
4 property transaction escrow, settlement, or closing. The  
5 escrow agent shall not charge a fee for protection provided by  
6 a title insurance company to parties to real property  
7 transactions under subsections (f) and (g) of this Section 16  
8 and Section 16.1, but shall collect from the parties the fee  
9 charged by the title insurance company and shall promptly remit  
10 the fee to the title insurance company. The title insurance  
11 company may charge the parties a reasonable fee for protection  
12 provided pursuant to subsections (f) and (g) of this Section 16  
13 and Section 16.1 and shall not pay any portion of the fee to  
14 the escrow agent. The payment of any portion of the fee to the  
15 escrow agent by the title insurance company, shall be deemed a  
16 prohibited inducement or compensation in violation of Section  
17 24 of this Act.

18 (i) The Secretary shall adopt and amend such rules as may  
19 be required for the proper administration and enforcement of  
20 this Section 16 consistent with the federal Real Estate  
21 Settlement Procedures Act and Section 24 of this Act.

22 (Source: P.A. 98-398, eff. 1-1-14; 98-832, eff. 1-1-15.)

23 Section 99. Effective date. This Act takes effect upon  
24 becoming law.